IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 528 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
DWARKA CEMENT WORKS LTD.,

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Appearance:
MR BHAVESH DESAI, AGP for the Appellant(s) No. 1
MR. HJ KARATHIYA(7012) for the Defendant(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 16/09/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This First Appeal arise out of the judgment and decree dated 19.05.2009, passed in Special Civil Suit No. 163 of 1995, filed by the Dwarka Cement Works – plaintiff – respondent against the State Government and Irrigation Department, wherein and whereby, the Additional Senior Civil Judge, Gandhinagar, decreed the suit and directed the State Government to pay outstanding amount of Rs.31,60,966=93ps to be paid with interest at the rate of 15% p.a. as a pre-suit interest for a period of 2 years on the due amount and further to pay the interest on the

principal amount as well as pre-suit interest at the rate of 18% p.a. pendent lite interest from the date of institution of suit till December, 2000 and the interest at the rate of 15% p.a. till realization

2. Parties are referred to as per their original status before the trial Court.

3. Brief facts for disposal of present appeal are stated as under:

(1) The respondent plaintiff – Dwarka Cement Works, pursuant to an agreement dated 02.05.1988, supplied and delivered cement 50,000 MTs. to the irrigation department – State of Gujarat – appellant herein.

(2) Despite having received and used the supplied cements, the defendant State had in total breach of agreed terms of payment failed and neglected to make payment of the outstanding amount of Rs.34,78.916=85 to the company.

(3) The plaintiff company was compelled to file a suit wherein, the company had claimed the principal amount of Rs.34,78,916=85ps and interest at the rate of 24% p.a. amounting to Rs.32,69,288/- aggregating Rs.67,48,145=21ps together with further interest at the rate of 24% from the date of institution of suit till realization.

4. Before the Civil Court, the defendant State in its written statement, Exh. 21, took the defense of total denial. So far interest part is concerned, it was contended that, there was no contractual rate fixed between the parties and therefore, the plaintiff is not entitled for pre-suit, *pendente lite*

and post decree interest as claimed.

5. On the basis of pleadings, the Civil Court framed the following issues :

(1) Whether it is proved that the plaintiff had dispatched cement to the various consignee as per the supply orders of the defendant?
(2) Whether it is proved that the plaintiff supplied cement within stipulated period and as per specification?
(3) Whether the defendant proves that the withholding of the payment is legal?
(4) Whether the plaintiff is entitled to recover the amount?
(5) Whether the plaintiff is entitled to get relief as prayed for?
(6) What order and decree

6. On appreciation of the evidence and hearing the parties, the trial Court answer the issues as under:

(1) In the affirmative
(2) In the affirmative
(3) In the negative
(4) In the affirmative
(5) & (6) As per final order.

7. Before the trial Court, the plaintiff company in support of its case, examined a Chairman and MD of the Company Mr. Jiten B. Modi at Exh. 32. He proved the documents at Exh. 52 to 56.

8. On the side of the appellant – State, Mr. D.A. Thakkar, Officer of Irrigation Department was examined at Exh. 37 and in his evidence, the

documents at Exh. 38 to 43 were being proved.

9. The trial Court on consideration of the documentary and oral evidence vide its judgment and decree dated 19.05.2009 found that:-

(i) That the parties had entered into an agreement dated 02.05.1988 for supply of 50,000 MTs of cement pursuant to a tender No. 3 of 1988-89 floated by the Irrigation Department; that the plaintiff company had supplied the cement for the sum of Rs.,5,43,96,823=93ps, against which the State defendant made payment Rs.5,12,35,855=21ps..; thus, the plaintiff is entitled to recovery the due amount Rs.31,60,966=93ps from the State – defendant.

(ii) So far as interest part is concerned, the trial Court has observed that, in the absence of agreement on the aspect of interest between the parties, the court may take into consideration the prevailing bank rate and the provision of Section 34 of the Code of Civil Procedure and considering the fact of the case, the trial Court awarded pre-suit interest at the rate of 15% p.a. for a period of 2 years from 31.12.1988 on the principal amount of Rs.31,60,966=93ps. and further awarded interest at the rate of 18% p.a. on the upon the principal amount together with the pre-suit interest (Rs.31,60,966=93ps +9,48,000/- = Rs.41,08,966=93ps) till December, 2000 and thereafter, at the rate of 15% p.a. thereon till realization.

10. In such circumstances, the appellant – State - original defendant,

being aggrieved by the judgment and decree, has preferred the present First Appeal.

11. We have heard learned State Counsel Mr. Bhavesh Desai and Mr. H. J. Karathia for the respective parties.

12. Mr. Desai, learned AGP while assailing the judgment and decree, has submitted that, the State is confined the prayer to the grant of rate of interest awarded on the different stages i.e. pre-suit, *pendente lite suit* and future and thus, the challenge in this appeal only to the limited extent of grant of rate of interest.

13. Mr. Desai, learned AGP submitted that, the principal amount decreed by the Civil Court is Rs.31,60,966.63/-. The controversy which arises for consideration in the present appeal, in so far as the decree for interest is concerned, the statement of computation of interest shows that the balance due was Rs.34,78,916.85/- as on 31.03.1990. The plaintiff was maintaining the running account and as per the running account, since 01.04.1989 to 31.03.1990, the payments were made, but with delay ranging from 18 days to 190 days and so on. Thus, the time of computation on interest cannot be clubbed together for all the payments received with delay and therefore, the calculation of interest made by the trial court @ 15% on the principal amount from the period of 2 years, amounting to Rs.9,48,000/- is without any basis. On the issue of awarding pre-suit interest, the State counsel submitted that, the plaintiff-company is not entitled to claim interest for the period prior to institution of the suit because there was no agreement to this effect between the parties and as such, there was no any mercantile usage to award pre-suit interest and there is no statutory provision like sale of goods, Negotiable Instruments

Act, 1881 and having regard to the conduct of the plaintiff, on equitable consideration, no pre-suit interest can be awarded. Thus, it was submitted that, there is no dispute about the principal amount but the amount of Rs.9,48,000/- awarded as a pre-suit interest by the trial court is against the settled principle of law.

14. Mr. Desai, learned AGP while referring Section 34 of the CPC, submitted that, it is the discretion of the Court to award interest *pendente lite* i.e. from the date of institution of the suit till realization of the amount. In the facts of the case, the judicial discretion has not been properly exercised while awarding *pendente lite* interest @ 18% on the principal amount together with the pre-suit interest (principal amount Rs.31,60,966.63 + Rs.9,48,000/- pre-suit interest @ 15% for a period of 2 years would come to Rs.41,08,966.63/-.) The trial court while awarding interest on the principal amount together with pre-suit interest, has not assigned any reasons and in mechanical manner, awarded an excessive and unjustifiable interest.

15. Lastly, on the issue of future interest i.e. from the date of suit till recovery, it was submitted by Mr. Desai that, the agreement for purchasing cement for the appellant-State was not for the trade or any commercial transaction, but the object was to purchase a bulk cement for different departments of the State for the construction of Dams, roads etc. and therefore, the grant of interest @ 15% by the trial court is against the proviso of Section 34 of the CPC as Section 34(1) enables the Court to grant interest from the date of decree till the date of payment at the rate as the Court deems fit, but where the liability arises out of commercial transaction, interest should be awarded at the rate not exceeding 6% per

annum. Thus, it was submitted that, the future interest awarded by the trial court @ 15% is excessive and against the statutory provision.

16. In such circumstances, Mr. Desai, learned AGP relying on the recent judgment of the Supreme Court rendered in the case of ***I.K. Merchants Private Limited vs. State of Rajasthan (2025 LiveLaw (SC) 377),*** contended that, having regard to the facts and evidence on record, decree on the part of interest may be reasonably modified and to that extent, appeal may partly be allowed.

17. Vehemently opposing the challenge to the decree on the interest part, learned counsel Mr. H.J. Karathiya, submitted that, since the date of agreement dated 02.05.1988, the plaintiff company had supplied huge stock of cement against which the State-appellant were irregular in making payment. The clause for payment was 30 days. There was no any clause for interest in the agreement itself. The appellant without any reason, retained the money and if it had been released in time, then, the company could have profitably utilized the same. Thus, therefore, it was submitted that, having regard to the provision of Section 34 CPC, the trial court has rightly exercised discretion to grant interest @ 15% on the principal sum before the pre-suit period and @ 18%, *pendent lite interest* and @ 15% for the post decree interest.

18. Mr. Karathiya, learned counsel submitted that, having regard to the delay in making payment on the part of the appellant herein, the trial court has while striking balance between both the sides on equitable consideration, properly exercised discretion in a fair manner and judiciously which does not needs any interference by the Appellate Court and therefore, he prayed that, the appeal on the aspect of awarding

interest, has no merits and same may be dismissed with costs.

19. Reliance having been placed on the decisions, (i) ***Food Corporation of India vs. Velji P. & Sons. Agencies (2021 2 GLR 1378 (Gujarat High Court)*** *and* (ii) ***Bhagwati Oxygen Limited vs. Hindustan Copper Limited [(2005) 6 SCC 462)*** to contend that, the Civil Court has discretion under Section 34 CPC to grant interest for pre-suit period and having regard to the nature of work, the 6% cap as provided under Section 34(1) for granting interest post-decree would not be applicable.

20. In such circumstances, Mr. Karathiya submitted that, the plaintiff company deprived of use of money to which he is legitimately entitled to be compensated for the deprivation by granting reasonable appropriate amount of interest and same has been done by the trial court while awarding the interest which does not require any interference.

21. We have heard at length learned counsel for the respective parties. Perused the case records and judgment impugned.

22. In light of the contentions of the parties and having regard to the statutory provision Section 34 CPC, the question arise for our consideration as to whether on the facts and in the circumstances of the case, the trial court was right in awarding interest @ 15% per annum on principal amount and then, @ 18% amount from the date of institution of suit on the principal amount together with the pre-suit interest and thereafter @ 15% per annum till realization?

23. Admittedly, there was no contractual stipulation between the parties providing for payment of interest at any particular rate. In the

absence of any agreement or contract, the provisions of Section 34 of the CPC dealing with the "interest" would come into play. Section 34 is reproduced herein below for ready reference:

> ***"34. Interest.—*** *(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date*
> *as the Court thinks fit:*
>
> *[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*
>
> *Explanation I.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).*
>
> *Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]*
>
> *(2) Where such a decree is silent with respect to the payment of further interest 4[on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."*

24. The aforesaid provision provides for the payment of interest where the decree is for payment of money. In the decree in a suit for payment of money, the Court has discretion to grant interest at such rate on the principal sum adjudged from the date of the suit to the date of decree and

also from the date of decree till the date of realization, however, further interest should not exceed 6% per annum when the liability arises out of commercial transaction. In other words, the liability in relation to the sum so adjudged had arisen out of commercial transaction, rate of such further interest may exceed 6% per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

25. It is settled position of law that, the interest can be awarded by Court of law do complete and full justice between the parties. The rational underlying the doctrine is based upon justice, equity and good conscience.

26. Reverting to the facts of the present case, it is not in dispute that, the trial court after appreciation of evidence, concluded that, the appellant-State is liable to pay the principal amount of Rs.31,60,966.63/- which was due on account of transaction entered into between the parties on the basis of tender agreement dated 02.05.1988. Admittedly, as per the statement of computation produced before the trial court, as on 31.03.1990, the amount was due to be paid to the plaintiff – company. The suit was instituted on 12.07.1991. Statutory notice was served under Section 80 CPC (Exh.56 on 10.01.1991). In such circumstances, so far as interest is concerned, the plaintiff company relied on statement of computation of interest produced as Annexure-B with the plaint. If we perused the annexure, it is evident that, the interest was charged @ 24% not on the due amount as on 31.03.1990, but on the invoices of each and every transaction of supply being considered. In other words, on the

different dates, the amount of respective invoices were pending and the delay of each invoice ranges from 4 days to 200 days. The account of the plaintiff maintained by the State was running account. The plaintiff had claimed interest prior to the date of filing of the suit which was computed to the tune of Rs.32,69,228/- @ 24% and together with the prior suit interest amount, the principal amount sought to be recovered was Rs.67,48,145/-. The trial court relying on the computation of interest at Annexure-B, without any justification, awarded pre-suit interest @ 15% for a period of 2 years and the amount of interest awarded as a pre-suit by the trial court was Rs.9,48,000/-. In our opinion, how the trial court had calculated two years, that has not been properly explained and why 15% amount being chosen, that also require to be properly explained by the trial court.

Pre-suit interest

27. Thus, the issue further arise for our consideration as to whether in the facts of the case, the plaintiff company is entitled for pre-suit interest as awarded by the trial court.

28. Recently, in the case of ***M/s. Tomorrowland Limited vs. Housing and Urban Development Corporation Limited and Anr. (2025 INSC 207),*** the Supreme Court while referring to the Five Judge Bench judgment **(*Central Bank of India vs. Ravindra (1996 (5) SCC 279)*,** held that, the award of interest is discretionary exercise steeped into equitable consideration. The award of interest *pendente lite* or post decree is discretionary as it is essentially governed by Section 34 of CPC *dehors* the contract between the parties and said discretion shall be exercised

fairly, judiciously and not for arbitrary of fanciful reasons.

29. In the present case, the computation of interest prepared by the plaintiff company has no any legal basis and considering the current account maintained by the State Government, the computation of the interest on the different invoice of different dates, cannot be considered for clubbing together the amount of interest. Thus, therefore, the trial court, in our opinion, has not properly exercised discretion in granting interest @ 15% for a period of 2 years on the principal amount as a pre-suit interest because admittedly, there was neither any agreement between the parties, nor, the interest is payable under the substantive applicable law. In such circumstances, the interest on equitable ground also cannot be considered because, there was a delay on the part of the plaintiff after service of statutory notice to institute the suit at the earliest.

30. Thus, in our opinion, the findings of the trial court on the pre-suit interest as awarded, is contrary to the settled principle of law and having regard to the facts of the case, the amount of interest of Rs.9,48,000/- awarded for a period of 2 years @ 15% is not sustainable in the eye of law.

Interest *Pendente lite* & post decree

31. In the facts of the case, the trial court awarded interest @ 18% on principal amount together with pre-suit interest from filing of the suit till December, 2000 and thereafter, @ 15 % till realization. It is relevant to note that, why the trial court awarded 15% interest till realization, has not been clarified in its judgment. The court has referred letter of Bank of India to consider the rate of interest prevalent on 13.03.2009. In our

opinion, the trial court ought to have taken into account the rate of interest of the nationalized bank either on the date of service of notice for recovery or date of institution of the suit. In such circumstances, the rate of interest awarded by the trial court is excessive and being awarded arbitrarily. Thus, having regard to the delay in making payment by the appellant and the amount involved, the reasonable rate of interest would be 12% per annum and accordingly, instead of 18%, we are awarding the interest @ 12% on the principal amount of Rs.31,60,966.63/-. Thus, the respondent-plaintiff is entitled to recover the interest @ 12% per annum on principal amount of Rs.31,60,966.63/- from the date of institution of the suit till the date of disposal i.e. from 12.07.1991 to 19.05.2009.

32. So far as post decree interest is concerned, the trial court awarded 15% interest from the date of disposal of the suit till realization. It is argued by the State that, the transactions cannot be said to be commercial transactions and therefore, the trial court could not have awarded 15% interest. On the other hand, learned counsel appearing for the plaintiff contended that, by way of tender, the plaintiff had agreed to supply quantity of cement and therefore, the transaction certainly fall under the commercial transaction and having regard to the delay on the part of the appellant, the award of 15%, cannot be said to be excessive and arbitrary. In the facts of the case, the liability arose out of transaction with Government Department. The Irrigation Department and R & B Division entered into agreement to procure the cement for their divisions as well as other divisions of the State Government, for construction of bridge etc. The plaintiff failed to prove that, for the purpose of profit, the procurement was done by the State Government. The proviso of Section 34 of the CPC enables the Court to grant interest from the date of decree

till the date of payment, where the liability arises out of commercial transaction at the rate exceeding 6% per annum, but not exceeding the contractual rate of interest, and in the absence of contract, not exceeding the rate at which the moneys are lent or advanced by nationalized bank in relation to a commercial transaction. Explanation (II) of Section 34 states that, the transaction is a commercial transaction if it is connected with the industry, trade or business. In our opinion, the activities for which the quantity of cement procured by the appellant-State cannot be connected with the industry, trade or business. Thus, while awarding the post decree interest @ 15%, the trial court failed to appreciate the statutory provision as well as activities of the appellant State Government and therefore, the interest awarded by the trial court exceeding 6% per annum is factually as well as legally not sustainable in the eye of law. However, having regard to the facts of the case, the plaintiff respondent is entitled to receive interest @ 6% on the principal amount of Rs.31,60,966.63/- from the date of disposal of the suit till the realization of the amount.

33. For the aforementioned reasons, the appeal is partly allowed. The judgment and decree on awarding the interest is modified to the following extent:

(i) The award of pre-suit interest Rs.9,48,000/- @ 15% on the principal amount is set aside.

(ii) The plaintiff – respondent shall be entitled to simple interest @ 12% per annum on the principal sum of Rs.31,60,966.63/- from the date of institution of the suit till its disposal.

(iii) The plaintiff – respondent shall be entitled to simple interest @ 6% per annum on the principal amount of Rs.31,60,966.63/- from the date of disposal of the suit till its recovery i.e. realization.

(iv) The judgment and decree shall stands modified to the aforesaid extent and the same be drawn accordingly. The decree of principal amount shall remain unaltered.

34. The R & P be sent back to the trial court concerned.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED